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**DEPARTMENT OF
WATER RESOURCES**

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

Subcase: 22-13915

**WITHDRAWAL OF MOTION TO SET ASIDE PARTIAL
DECREE FOR WATER RIGHT NO. 22-13915
PURSUANT TO I.R.C.P. 60(b) AND MEMORANDUM IN
SUPPORT**

Cherise Dodson, Gary Black, GNJ Properties, LLC, Idaho Investment Group, LLC, IGO Investments 1, LLC, KPW Holdings, LLC, Lanelle Peck, Michael Dodson, Pensco Trust Company, RIF Holdings 1, LLC, Robert Elmer, RYMI Investments, LLC, Stillwater Holdings, LLC, Stoly Associates, LC, Travis Gunnell, Trevor Peck and W.Steven Gunnell, (hereinafter, the "Claimants") by and through their counsel of record, Robert L. Harris of Holden, Kidwell, Hahn & Crapo, PLLC, hereby **withdraw** their previously filed motion requesting this court to set aside the partial decree for Water Right No. 22-13915 pursuant to I.R.C.P. 60(b) filed on February 3, 2011 (hereinafter, the "*Motion*").

COPY

The *Motion* had attached to it, as Exhibit A, an administrative decision entered for the parent water right of 22-13915 (which was Water Right No. 22-683) on November 6, 1990 (hereinafter, the “*Transfer Order*”). This *Transfer Order* provided the basis for Water Right No. 22-13915.

As a brief background, Gary Grandy (the predecessor landowner to the Claimants) and Dick Gebhard filed an application for transfer in the late 1980s to add a point of diversion to Water Right No. 22-683 on Pole Creek described as the NE1/4NW1/4SW1/4 of Section 26, Township 3 North, Range 45E (hereinafter, the “Upper POD”). The proposed Upper POD was to be located on United States Forest Service property. Grandy and Gebhard already had a point of diversion on Pole Creek located in the SW1/4NW1/4NW1/4 (Lot 4) of Section 26, Township 3N, Range 45E (the “Lower POD”) which is also located on Forest Service property, but Grandy and Gebhard wanted to add a pipeline further up Pole Creek to better supply their water right. The transfer application was protested by the Forest Service on various grounds, and ultimately the parties agreed to have the matter decided by the Director of IDWR, Keith Higginson. Director Higginson authored the *Transfer Order*. Eventually, based upon the *Transfer Order*, Water Right No. 22-13915 was recommended and received a partial decree in the SRBA in August of 2010.

The Motion was filed in February of 2011, and was based upon a further review of language in the *Transfer Order* by Claimants, which initially suggested to the Claimants that the entirety of the *Transfer Order* was not fully incorporated in the partial decree for Water Right No. 22-13915. This was because the partial decree did not include a season of use and quantity to provide the ability to divert 2.0 cfs of irrigation water between April 15th and June 30th, and between September 1st and October 31st, at the Upper POD.

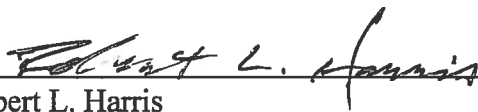
Paragraph 6 (found on page 3) of the *Transfer Order*'s Findings of Fact states that "[t]he applicant does not intend to divert a total of more than the original 2.00 cubic feet per second. The applicant will limit diversion from the upper point of diversion to 0.33 cubic feet per second from July 1 to August 31 of each season." Later, the *Transfer Order* states that "[n]o more than 0.33 cubic feet per second can be diverted from the new point of diversion between July 1 and August 31 of each year." *Transfer Order* at 5. Read in isolation, these paragraphs suggest that the .33 cfs diversion limitation of irrigation water at the Upper POD is only limited during the summer months of July and August, and that the other elements of the right at issue in the *Transfer Order* (Water Right No. 22-683, the parent right to Water Right No. 22-13915) remained fully operative, which would allow diversion of the full 2.00 cfs of irrigation water allowed for under Water Right 22-683 to be at the Upper POD. It was upon this basis that the *Motion* was filed.

However, upon further review of historic documents relating to the transfer application that led to the *Transfer Order*, which were identified by the United States as a respondent to the Motion, it is clear that the transfer application (Transfer No. 3509) that led to the *Transfer Order* sought only to allow diversion and use of .33 cfs of irrigation water at the Upper POD, under any circumstances, during the months of July and August. In other words, the sole change relative to the diversion of irrigation water would be to allow for use of the Upper POD during July and August only. Any use of irrigation water under Water Right No. 22-683 from April to June, and from September to October, would be entirely from the Lower POD, which was already authorized under Water Right No. 22-683.

In short, the transfer that led to the *Transfer Order* sought a change authorizing diversion and use of .33 cfs of irrigation water to be diverted from the Upper POD under Water Right No. 22-13915 during the months of July and August, period. Diversion of irrigation water at times other than July and August must be diverted at the Lower POD. This is exactly what IDWR recommended, and is what the current partial decree for Water Right No. 22-13915 provides for. Therefore, the partial decree as it is currently documented is correct in all respects.

Based upon this information, the Claimants hereby withdraw the *Motion*, and request that the hearing date currently set on the motion for July 20, 2011 at 11:30 be vacated. Water Right No. 22-13915 was correctly decreed, and there should be no further action taken on this water right.

Dated this 14th day of July, 2011.



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC

CERTIFICATE OF MAILING

I certify that on this 14th day of July, 2011, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

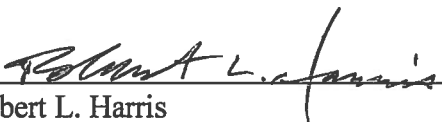
2. Copies to:

Sean R. Moulton
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IDWR Document Depository
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Boise, ID 83720-0098

Chief, Natural Resources Division
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State of Idaho
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Robert L. Harris

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